

ORIGINAL

FCC MAIL SECTION
Before the
Federal Communications Commission
Washington, D.C. 20554

JUN 29 11 51 AM '93

MM Docket No. 93-174
DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8263
Table of Allotments,
FM Broadcast Stations.
(Owensville and Versailles,
Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 10, 1993; Released: June 25, 1993

Comment Date: August 16, 1993
Reply Comment Date: August 31, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Twin Lakes Communications, Inc. ("petitioner"), requesting the substitution of Channel 236C3 for Channel 236A at Versailles, Missouri. Petitioner also requests modification of its license for Station KLGS(FM), Channel 236A, to specify operation on the higher class channel. Petitioner provided an engineering study in support of the proposal and indicated it would apply for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Versailles with a wide coverage area FM service. Petitioner notes that Channel 236C3 can be allotted to Versailles, Missouri, in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 237A is substituted for Channel 237C2 at Owensville, Missouri.¹ Channel 237A can be substituted for Channel 237C2 at Owensville, Missouri, consistent with the Commission's spacing requirements at the current site for Station KLZE(FM). Although Station KLZE(FM)'s licensee, Davel Broadcasting Group, Inc. ("Davel") requested and was granted authority to operate on Channel 237C2, effective July 15, 1988, see *Report and Order* (MM Docket No. 87-411), 3 FCC Rcd 3127 (1988), its construction permit for Channel 237C2 was cancelled by staff letter dated October 22, 1992. On April 1, 1993, the Commission sent Davel a letter advising it that unless it filed an FCC Form 301 application for a construction permit for Class C2 facilities within 30 days, it would be made a party to this rule making proceeding and its allotment could be downgraded. Further, the licensee was notified that no extensions of this 30 day period would be granted. Davel did not file a Form 301 to upgrade Station KLZE(FM) to

Class C2 facilities. Therefore, Davel is deemed to have abandoned its interest in the Class C2 allotment. Upon termination of this proceeding, we shall modify the license of Station KLZE(FM) to specify operation on Channel 237A.² We shall also propose to modify the license for Station KLGS(FM), Channel 236A, Versailles, Missouri, as requested by the petitioner, to specify operation on Channel 236C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. We believe the public interest would be served by proposing the substitution of Channel 236C3 for Channel 236A at Versailles, Missouri, since it would provide the community with its first wide coverage area FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Present	Channel No.	Proposed
Owensville, Missouri	237C2		237A
Versailles, Missouri	236A		236C3

4. IT IS ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making* to the following:

Davel Broadcasting Group, Inc.
309B N. First Street
Owensville, Missouri 65066

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **August 16, 1993**, and reply comments on or before **August 31, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Frank R. Jazzo
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Rosslyn, Virginia 22209

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the*

¹ The coordinates for Channel 236C3 at Versailles are 38-23-27 and 92-38-06.

² The coordinates for Channel 237A at Station KLZE(FM)'s licensed site at Owensville are 38-15-22 and 91-32-04.

Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.